ILE COPY

Office-Supreme Court, U.S.
FILED
JUN 3 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 875

SWIFT & COMPANY, ARMOUR AND COMPANY, AND THE CUDAHY PACKING COMPANY, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

HOWARD J. TRIENENS,
H. BLAIR WHITE,
CLARENCE F. WITTENSTROM, JR.,
11 South La Salle Street,
Chicago 3, Illinois,
Telephone STate 2-5400,
Attorneys for Amici Curiae.

SIDLEY, AUSTIN, BURGESS & SMITH,
11 South La Salle Street,
Chicago 3, Illinois,
Of Counsel.

May 23, 1961.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 875.

SWIFT & COMPANY, ARMOUR AND COMPANY, AND THE CUDAHY PACKING COMPANY, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

The Western States Meat Packers Association, Inc., Texas Independent Meat Packers Association, Luer Packing Company, Pacific Meat Company, Inc., McFarland, Inc., and Modesto Meat Company hereby respectfully move for leave to file a brief as *amici curiae* in this case. The consent of counsel for the appellants has been requested but refused.

The Western States Meat Packers Association, Inc., a non-profit California corporation with principal office in San Francisco, California, represents 525 small meat packers

and processors in the Rocky Mountain and Pacific Coast states, Western Texas and Hawaii. No members manufacture, distribute at wholesale or sell at retail any of the grocery items prohibited by the Consent Decree, and none of the members sell meat at retail.

Texas Independent Meat Packers Association, a nonprofit Texas association with principal office in Dallas, Texas, represents 300 small meat packers and processors in the state of Texas. Its members do not, with few exceptions, engage in the wholesaling or retailing of any of the prohibited items (groceries), nor do the members engage in the retail sale of meat.

Luer Packing Company, a California corporation with principal office in Los Angeles, California, engages in the business of slaughtering and processing meat.

Pacific Meat Company, Inc., an Oregon corporation with principal office in Portland, Oregon, engages in the business of slaughtering meat.

McFarland, Inc., a Utah corporation with principal office in Salt Lake City, Utah, engages in the business of slaughtering and processing meat.

Modesto Meat Company, a California corporation with principal office in Modesto, California, engages in the business of slaughtering and processing meat.

None of the corporate movants sell meat at retail nor do they manufacture, distribute at wholesale or sell at retail any of the grocery items prohibited by the Consent Decree. None of the movants or the meat packers they represent are listed among the country's ten largest meat packers.

The interest of movants in this case arises from the fact that, as small meat packers and associations representing small meat packers, they constitute a class protected by the equity decree entered in 1920, upheld without

modification by this Court in 1932, *United States* v. *Swift & Co.*, 286 U. S. 106, and in effect over the intervening years. The small meat packers, including movants, are the immediate beneficiaries of the consent decree and will be directly and immediately injured if the decree is modified as requested by appellants.

In the District Court, the Government dealt comprehensively with the points raised by the three appellant meat packers. The Government, however, represents primarily the interest of the general public in free competition, which will be injured only after the competition of the appellant meat packers with the small packers is lessened or destroyed. On the other hand, the small meat packers represented by movants would be directly and immediately affected by any modification of the decree. This interest of movants was recognized and their participation as *amici curiae* was granted by the District Court, 189 F. Supp. 885, 901 (N. D. Ill. 1960).

As an illustration, movants have a vital interest in retaining the prohibitions of paragraph Sixth of the Decree which enjoins appellants from owning or otherwise controlling retail meat markets in the United States. The District Court recognized and stressed this interest, stating:

> "If the defendants were to engage in the business of operating general retail food stores, they would enjoy a substantial advantage over their rivals as a result of their control of nearly half the nation's meats and meat products. Vertical integration through acquisition of existing retail stores or chains would tend to restrain competition by providing the defendants with captive outlets for both their meats and groceries, to the exclusion of competitive products." 189 F. Supp. at 912.

The public interest would suffer, but only after movants'

businesses, which now provide full and healthy competition, had been destroyed.

Movants' participation in this case as *amici curiae* is requested only in the event the Court does not summarily affirm the District Court's order entered on December 12, 1960, dismissing appellants' petitions for modification on the consent decree. Despite the importance to a competitive economy of this litigation, summary affirmance is appropriate here because the District Court, after a lengthy trial and a comprehensive analysis of the facts followed and applied the law as set forth in the opinion of Mr. Justice Cardozo in this Court's prior decision in this case, *United States* v. *Swift & Co.*, 286 U. S. 106.

For the reasons expressed herein, movants request that, in the event the Court notes probable jurisdiction, their motion for leave to file a brief as *amici curiae* in this case be granted.

Respectfully submitted,

HOWARD J. TRIENENS,
H. BLAIR WHITE,
CLARENCE F. WITTENSTROM, JR.,
Attorneys for Western States Meat Packers Association, Texas Independent Meat Packers Association, Luer Packing Company, Pacific Meat Company, Inc., McFarland, Inc., and Modesto Meat Company, Amici Curiae.

SIDLEY, AUSTIN, BURGESS & SMITH,
11 South La Salle Street,
Chicago 3, Illinois,
Of Counsel.

May 23, 1961.